

Before the  
Federal Communications Commission  
Washington, DC 20554

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AUG 15 2002

FCC - MAILROOM

In the Matter of )  
)  
Request for Review of the )  
Decision of the )  
Universal Service Administrator by )  
)  
Wexford-Missaukee Independent School District )  
Cadillac, Michigan )  
)  
Federal-State Joint Board on )  
Universal Service )  
)  
Changes to the Board of Directors of the )  
National Exchange Carrier Association, Inc. )

File No. SLD-154882

CC Docket No. 96-45

CC Docket No. 97-21✓

## ORDER

Adopted: August 8, 2002

Released: August 9, 2002

By the Telecommunications Access Policy Division, Wireline Competition Bureau:

1. The Telecommunications Access Policy Division has under consideration a Request for Review filed by Wexford-Missaukee Independent School District (Wexford-Missaukee), Cadillac, Michigan, seeking review of a decision issued by the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (Administrator).<sup>1</sup> Wexford-Missaukee seeks review of SLD's denial of its application for discounts under the schools and libraries universal service support mechanism.<sup>2</sup> For the reasons set forth below, we deny Wexford-Missaukee's Request for Review.

2. Under the school and libraries universal service support mechanism, eligible schools, libraries, and consortia that include eligible schools and libraries, may apply for discounts for eligible telecommunications services, Internet access, and internal connections.<sup>3</sup> The Commission's rules provide that, with one limited exception for existing, binding contracts, an eligible school, library, or consortium that includes eligible schools or libraries must seek

<sup>1</sup> Letter from Lynn Bollman, Wexford-Missaukee Independent School District, to Federal Communications Commission, filed October 9, 2001 (Request for Review).

<sup>2</sup> *Id.* Section 54.719(c) of the Commission's rules provides that any person aggrieved by an action taken by a division of the Administrator may seek review from the Commission. 47 C.F.R. § 54.719(c).

<sup>3</sup> 47 C.F.R. §§ 54.502, 54.503.

competitive bids for all services eligible for support.<sup>4</sup> In accordance with the Commission's rules, an applicant must file with SLD, for posting to its website, a FCC Form 470 requesting services.<sup>5</sup> The applicant must wait 28 days before entering into an agreement with a service provider for the requested services and submitting an FCC Form 471 requesting support for the services ordered by the applicant.<sup>6</sup> Further, the instructions for the FCC Form 471 state that the date of signature on the Block 6 certification page of the FCC Form 471 "CANNOT be earlier than any Allowable Contract Date you cited in Item (17) of any Block 5 submitted with this application."<sup>7</sup>

3. The Commission's rules allow the Administrator to implement an initial filing period ("filing window") for the FCC Form 471 applications that treats all schools and libraries filing within that period as if their applications were simultaneously received.<sup>8</sup> Section 54.507(c) of the Commission's rules states that fund discounts will be available on a first-come-first-served basis.<sup>9</sup> Applications that are received outside of this filing window are subject to separate funding priorities under the Commission's rules.<sup>10</sup> It is to all applicants' advantage, therefore, to ensure that the Administrator receives their applications prior to the close of the filing window.

4. Wexford-Missaukee's Funding Year 1999 FCC Form 470 was posted to SLD's website on March 9, 1999 with an allowable contract date of April 6, 1999.<sup>11</sup> Wexford-Missaukee filed its FCC Form 471 on April 7, 1999.<sup>12</sup> This FCC Form 471 was signed on April 5, 1999. By letter dated April 27, 2001, SLD denied Wexford-Missaukee's funding requests.<sup>13</sup> SLD explained that the FCC Form 471 was signed prior to the expiration of the 28-day waiting

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<sup>4</sup> 47 C.F.R. §§ 54.504, 54.511(c).

<sup>5</sup> See Schools and Libraries Universal Service, Description of Services Requested and Certification Form, OMB 3060-0806 (September 1999) (FCC Form 470).

<sup>6</sup> 47 C.F.R. § 54.504(c); see Schools and Libraries Universal Service, Services Ordered and Certification Form, OMB 3060-0806 (September 1999) (FCC Form 471).

<sup>7</sup> Instructions for Completing the Schools and Libraries Universal Service Services Ordered and Certification Form, OMB 3060-0806 (FCC Form 471) (September 1999) (FCC Form 471 Instructions), at 26.

<sup>8</sup> 47 C.F.R. § 54.504(c).

<sup>9</sup> 47 C.F.R. § 54.507(c).

<sup>10</sup> 47 C.F.R. § 54.507(g).

<sup>11</sup> FCC Form 470, Wexford-Missaukee Independent School District, filed March 9, 1999. Previously, this funding period was referred to as Funding Year 2. Funding years are now described by the year in which the funding period starts. Thus the funding period which begins on July 1, 2000 and ends on June 30, 2001, previously referred to as Funding Year 3, is now called Funding Year 2000. The funding period which begins on July 1, 2001 and ends on June 30, 2002, is now known as Funding Year 2001, and so on.

<sup>12</sup> FCC Form 471, Wexford-Missaukee Independent School District, filed April 7, 2000 (Wexford-Missaukee FCC Form 471).

<sup>13</sup> Letter from the Schools and Libraries Division, Universal Service Administrative Company, to Gary Ross, Wexford-Missaukee Independent School District, dated April 27, 2001 (Funding Commitment Decision Letter).

period computed from the date of the posting of Wexford-Missaukee's FCC Form 470 to SLD's website.<sup>14</sup>

5. Wexford-Missaukee then filed an appeal with SLD.<sup>15</sup> With respect to Funding Request Numbers (FRN) 302430 and 302434, Wexford-Missaukee stated that because FRN 302430 and FRN 302430 were not for a contracted service, the date listed in Block 6 was irrelevant. With respect to FRN 302412, Wexford-Missaukee argued that it had an existing contract with Ameritech to provide Internet service, but posted the request to SLD's website in an effort to improve existing services at a reduced cost.<sup>16</sup> Wexford-Missaukee stated that it did not receive any proposals and elected to continue its existing service with Ameritech. In addition, for all three FRNs, Wexford-Missaukee argued that although the Block 6 Certification was dated April 5, 1999, that date reflected only the date that the form was typed.<sup>17</sup> Wexford-Missaukee referenced Block 5 of its FCC Form 471, stating that all the contract award dates were listed as April 6, 1999, in compliance with the 28-day waiting requirement.<sup>18</sup>

6. SLD subsequently denied Wexford-Missaukee's appeal.<sup>19</sup> SLD noted that Commission rules require that except under limited circumstances, all FCC Forms 470 received be posted on the website for 28 days so that applicants can carefully consider all bids received before selecting a vendor and entering an agreement. SLD stated that signing the FCC Form 471 indicates that the FCC Form 471 is complete and that the vendors providing services have been chosen.<sup>20</sup> SLD explained that it denied Wexford-Missaukee's appeal because Wexford-Missaukee's application did not comply with the competitive bidding requirement that the FCC Form 470 be posted to SLD's website for 28 days prior to signing the FCC Form 471.<sup>21</sup>

7. Wexford-Missaukee then filed the instant Request for Review with the Commission.<sup>22</sup> Wexford-Missaukee asserts that if had it received its Funding Commitment

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<sup>14</sup> *Id.*

<sup>15</sup> Letter from Lynn Bollman, Wexford-Missaukee Independent School District, to the Schools and Libraries Division, Universal Service Administrative Company, filed May 15, 2001.

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> Letter from the Schools and Libraries Division, Universal Service Administrative Company, to Gary Ross, Wexford-Missaukee Independent School District, dated September 10, 2001 (Administrator Decision on Appeal).

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> Request for Review.

Decision Letter in a timely manner it could have submitted a second funding request in the Funding Year 1999 "Second Filing Window".<sup>23</sup>

8. We have reviewed the record before us and conclude that SLD properly denied Wexford-Missaukee's FRNs, notwithstanding the delay in processing Wexford-Missaukee's application. The record demonstrates that SLD properly denied the funding requests because Wexford-Missaukee failed to comply with the Commission's competitive bidding requirements.<sup>24</sup> A signature date on the FCC Form 471 or on a provider agreement that predates the expiration of the 28-day posting period indicates that the applicant failed to wait 28 days before entering an agreement with the service provider. By completing and signing the application before the waiting period expired, Wexford-Missaukee effectively indicated that it had ceased consideration of competitive bids, thereby undermining the Commission's competitive bidding requirements. We therefore uphold the Administrator's decision and deny Wexford-Missaukee's Request for Review.

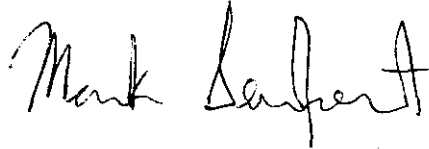
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<sup>23</sup> *Id.*

<sup>24</sup> See SLD's website, <<http://www.sl.universalservice.org>>. In Funding Year 1999, the original filing window closed on April 6, 1999. Wexford-Missaukee filed its FCC Form 471 on April 7, 1999, after the filing window had already closed. (Wexford-Missaukee FCC Form 471). At that time, SLD did not reject Wexford-Missaukee's application as untimely, but instead held the application until it was determined that there was funds available after all timely submitted applications were funded. In March of 2000, SLD announced that it would consider FCC Forms 471 applications for Funding Year 1999 that had been received by SLD by March 31, 2000. See SLD's website, What's New at SLD (March 20, 2000), at <<http://www.sl.universalservice.org/whatsnew/032000.asp>>. The March 31, 2000 filing window deadline has been referred to as the "Second Filing Window." The filing window for Funding Year 2000 closed on January 19, 2000. Thus, SLD was processing applications for Funding 1999 ("in-window"), Funding Year 2000, and the Second Filing Window for Funding Year 1999, respectively. This resulted in a considerable delay in denying Wexford-Missaukee's application.

9. ACCORDINGLY, IT IS ORDERED, pursuant to authority delegated under sections 0.91, 0.291, and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, and 54.722(a), that the Request for Review filed by Wexford-Missaukee Independent School District, Cadillac, Michigan, on October 9, 2001, IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION



Mark G. Seifert *by ENE*  
Deputy Chief, Telecommunications Access Policy Division  
Wireline Competition Bureau